

Atty. Docket No. 696.001

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REMARKS

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner. The Office is respectfully requested to reconsider the rejection and objection present in the outstanding Office Action in light of the following remarks.

In the Office Action dated April 19, 2006, pending Claims 1-16 were rejected. In response Applicants amended independent Claim 1. Applicants intend no change in the scope of the claims by the changes made by this amendment. It should be noted these amendments are not in acquiescence of the Office's position on allowability of the claims, but merely to expedite prosecution.

An interview was conducted between Applicant's counsel, one of the inventors, an Officer associated with the Assignee, and the Examiner on October 13, 2006. The objections and rejections in the outstanding Office Action were discussed. However, no agreement was made with regards to the claims during this interview.

Claim 1 stands rejected under 35 US C § 112, second paragraph, as failing to distinctly point out and particularly claim the subject matter which applicant regards as the invention. Specifically, the claim was objected to because of the claim language stating that the system is "able to" perform certain actions. The claim has been amended to address this issue. Thus, reconsideration and withdrawal of this rejection is respectfully requested.

Claims 1-16 stand rejected under 35 USC § 102(e) as being anticipated by Herz et al. (hereinafter "Herz"). Reconsideration and withdrawal of this rejection is respectfully requested.

As best understood, the invention set forth by Herz contemplates a system with the ability to automatically determine which products a shopper would be most likely to buy, and which offers a vendor should make available to the shopper in order to maximize the vendor's profit (paragraph 0002, lines 1-5). The system constructs and updates shopper profiles based on specific demographic information and history of their shopping behavior (paragraph 0002, lines 5-9). These profiles are used to determine products and offers to present to shoppers (paragraph 0002, lines 9-13).

The price and product determination system of Herz is in stark contrast to the present invention. As discussed in the specification and in the independent claim, the instant invention uses configuration data provided by an Internet merchant that operates the web site to create models that reflect real-time market sensitivities. These models are then used to determine the prices and offers that are made available to customers. There is no teaching or suggestion in Herz of a model that reflects real-time market sensitivities of the product through experimentation. In fact, there is no teaching or suggestion in Herz of any type of real-time tracking or computation of information.

Specifically, it is respectfully submitted that there is a stark distinction between promotion determination based upon user profiles and behaviors and running experiments on randomly chosen visitors for which profiling or prior data concerning the visitor is not a necessary element in the promotion determination. Further, by utilizing prior historical

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data concerning the visitor to determine a promotion, that promotion cannot, in effect, be a real-time determination due to market sensitivities; rather it is a historically-based determination of user behavior.

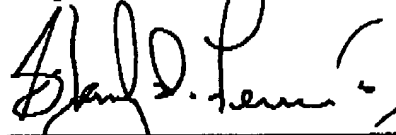
Thus, it is respectfully submitted that Herz et al. clearly falls short of present invention (as defined by the independent claims) in that, *inter alia*, it does not disclose "experiments on randomly chosen visitors according to the configuration data to create a model that reflects real-time market sensitivities concerning the product, and determining the optimal price for the product using the model acquired by electronic manipulation using a processor". Accordingly, Applicants respectfully submit that the applied art does not anticipate the present invention because, at the very least, "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under construction." *W.L. Gore & Associates, Inc. v. Garlock*, 721 F.2d 1540, 1554 (Fed. Cir. 1983); *see also In re Marshall*, 198 U.S.P.Q. 344, 346 (C.C.P.A. 1978).

In view of the foregoing, it is respectfully submitted that independent Claim 1 fully distinguishes over the applied art and is thus allowable. By virtue of dependence from Claim 1, it is thus also submitted that Claims 2-16 are also allowable at this juncture.

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In summary, it is respectfully submitted that the instant application, including Claims 1-16, is presently in condition for allowance. Notice to the effect is hereby earnestly solicited. Applicants' undersigned attorney would welcome further discussion with the Office in the event there are any further issues in this application.

Respectfully submitted,



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